

PUBLIC HEARING

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF THE WORKERS' COMPENSATION
SCHEDULE FOR RATING PERMANENT DISABILITIES

REAGAN REGAN STATE BUILDING
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA

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10:15 A.M.

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George Parisotto, Counsel, DIR

Maureen, Gray, Regulations Coordinator, DIR

SPEAKERS

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Linda Atcherley, Legislative Chair, California Applicants'

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Jesse Cenicerros, VIAW President

Velda Gall, VIAW

Gary Hoag, VIAW

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INDEX

	PAGE
Opening remarks by Ms. Nevans	4
Linda Atcherley	5
Mark Webb	19
Alan Thompson	22
Gary Hoag	28
Velda Gall	32
Cynthia Leon	39
Jesse Cenicerros	41
Scott Lipton	45
Saul Allweiss	48
Arturo Jimenez	49
Certificate of Transcriber	54

1 PROCEEDINGS

2 MS. NEVANS: Good morning to everybody here,
3 whoever you are, and thanks for coming today. This is
4 the first of two public hearings on the Permanent
5 Disability Rating Schedule that will be effective for
6 injuries on and after January 1st, 2009.

7 My name is Carrie Nevans, and I'm the
8 Administrative Director of the Division of Workers'
9 Compensation. To my right is Susan Gard, who's the
10 Chief of Legislation and Policy for the Division, and on
11 the other side of here is George Parisotto. He's an
12 attorney with DWC, who's been heavily involved in
13 drafting the regulations.

14 We also have here today Maureen Gray. She's
15 down here at the table. If you could, when you come up
16 to give testimony, if you have written comments that you
17 would like to submit, give them to Maureen. And, also,
18 if you have a business card with your name and your
19 affiliation, give it to her because that makes it easier
20 for the court reporter later to put together the
21 transcript.

22 Everything that's said in this hearing today
23 will go into a transcript that becomes part of the
24 official rule-making record for these regulations.
25 We'll be taking the written comment also until 5:00 p.m.

1 tomorrow. Everything that anyone submits becomes part
2 of the official record. It looks like we so far have
3 about 14 people who have signed up that may want to give
4 testimony. I'm not going to put a time restriction on
5 right now because I don't think that's an excessively
6 large number, but if we do find that we're going
7 extremely long, we may later ask people to limit to a
8 certain time period; but for now I'm not going to start
9 off that way.

10 Remember that the purpose of the hearing is to
11 talk about the Permanent Disability Rating Schedule, not
12 the other components of the workers' comp system. So
13 I'm asking you to please limit your comments to the
14 Permanent Disability Rating Schedule.

15 We're not going to enter into a discussion
16 with you. We're taking your testimony. We may ask you
17 to clarify something that you said, but we're not here
18 to answer questions specifically. However, if you do
19 have specific questions, we'll talk to you after the
20 hearing.

21 So I'm going to go ahead and start off the
22 list with the first speaker who is signed up, and that's
23 Linda Atcherley from the California Applicants'
24 Attorney.

25 MS. ATCHERLEY: My name is Linda Atcherley.

1 I'm the past president -- immediate past president of
2 the California Applicants' Attorneys Association, and
3 the current legislative chair. I also had the pleasure
4 of participating with many other people on the
5 Permanent Disability Rating Schedule Advisory Committee
6 meetings, chaired by Ms. Nevans; and I congratulate
7 everybody on the work that they have done up to this
8 point of promulgating these regulations and also during
9 the studies that were required under 4660(c).

10 California Applicants' Attorneys Association
11 will be also testifying tomorrow with Susan Borg, the
12 President, and Mark Gerlach, Consultant to the
13 organization. We have about a 25-page formal written
14 comment with attachments that will be submitted at that
15 time.

16 That formal comment contains a lot of
17 mathematical formulas and a detailed analysis of the --
18 of the FEC variance and what we believe is the correct
19 methodology for adjusting the schedule to actually have
20 an empirically based schedule. We do not believe that
21 the -- that this particular schedule is what was meant
22 by an empirically based schedule, nor do we feel that
23 this schedule has fully taken into consideration the
24 requirements of 4660(c) that diminished the studies that
25 were done by the Administration itself and the RAND

1 studies of 2003, which were specifically mentioned in
2 that subsection in the statute.

3 Basically, I have tried to tailor my remarks
4 to fit within a 10 to 15 minute time frame, so I'm not
5 going to get into the real detailed analysis of the
6 formula, but basically we feel legally that the first
7 framework we're working with when developing a schedule
8 for permanent disability is the California State
9 Constitution, Article 14, Section 4. And that is the
10 ultimate legal authority for workers' compensation
11 because that particular section states that the
12 Legislature has primary power to fix a complete system
13 of workers' compensation, including insurance and
14 self-insurance.

15 The directive -- there are a few directives in
16 this section that are important to remember, and they
17 get never mentioned. And one is that the purpose of
18 these benefits is for the health, safety, and general
19 welfare of the injured worker and those dependent upon
20 them for support.

21 That's what the Constitution wanted the
22 Legislature to do when they were fixing their complete
23 system of workers' compensation. Permanent disability
24 itself has always had a twofold purpose. The first
25 purpose is to actually compensate for the actual injury,

1 losing your leg, et cetera. The other purpose is to
2 give some supplemental payments during a time period
3 when the person is transitioning from their regular work
4 or their at-injury employment to some other work if they
5 need to because of having a permanent disability.

6 The Constitution also requires that everything
7 that's done be done with an eye to providing
8 substantial justice. All right. So as we go through,
9 the Legislature, in enacting certain changes pursuant
10 to SB899, actually made two changes to the permanent
11 disability itself.

12 In the structure of the law, the Constitution
13 is first, legislation is second, and the regulations are
14 supposed to effectuate the legislation that was enacted.
15 The Legislature, in 4658, made some very intentional
16 cuts to permanent disability by reducing the number of
17 weeks for compensation according to that section.

18 When they enacted 4660, they also made some
19 cuts, although they weren't said that way, but they
20 changed from a subjective system to an objective system
21 by requiring the use of the AMA guides. That act alone
22 took out about 30 percent of the claims that otherwise
23 would have received a permanent disability rating under
24 the old schedule.

25 That was an intended cut because we wanted to

1 get to an objective system where we're compensating
2 people that have objective losses or problems that can
3 be verified through objective studies like MRIs, x-rays,
4 et cetera.

5 The statute did not change that disability is
6 the nature of the injury and disfigurement plus an
7 adjustment for age and occupation. They then said that
8 you also had to give consideration for diminished Future
9 Earning Capacity -- and that has been shortened as FEC.
10 And so when we talk about the FEC factors, we're really
11 talking about the requirement to take into consideration
12 the effect of the injury and diminished earning, Future
13 Earning Capacity, FEC.

14 So, here's the problem. The FEC was supposed
15 to be a multiplier because the AMA specifically states
16 that their impairments were not disability, and were
17 never intended to be disability or a measure of the
18 ability to do work. So the FEC factor is, in essence, a
19 multiplier to the impairment value to take into
20 consideration the diminished Future Earning Capacity and
21 create a disability number. That is what we normally
22 call a standard. That standard is then adjusted for
23 occupation first and then age last.

24 We have heard in testimony under the first FEC
25 testimony from Senators Richard Alarcon and Sheila

1 Kuehl that no decrease in the average rating was
2 intended by the changes in SB899, including
3 particularly with respect to Labor Code 4660.

4 What has actually happened, when the 1/1/2005
5 schedule was promulgated, was that there's a 50 to 70
6 percent cut of benefits, permanent disability benefits.
7 Most of those deriving from the use of the FEC factor
8 because I'm not -- the only thing that I'm going to say
9 about the 30 percent that were lost that are no longer
10 rateable is that some of these ratings, these zero
11 ratings, also include people that lose their jobs
12 because of restrictions issued by the doctor which are
13 not rateable impairments under the AMA.

14 So, the studies did not at all take a look at
15 the people who received a zero permanent disability
16 rating and had wage losses commensurate with a zero
17 percentage. So I think that at some point we really
18 need to take a look at that to figure out if there's
19 something that needs to be done about the people that
20 have zero and still have wage losses.

21 For the people that are receiving impairment
22 ratings now, we do have a 50 to 70 percent cut. And if
23 one assumes, like CAAA does, that according to the
24 Senator's testimony that was given at the first hearing
25 on the Permanent Disability Rating Schedule -- or

1 actually I think it was at the -- anyway -- that no
2 intended cut was made for -- they intended no cut or
3 decrease from the average rating of 1997. The average
4 rating in 1997 was 24 percent.

5 So one would assume that if you're working
6 with the FEC factors, that you're working back towards
7 neither an increase in the average permanent disability
8 rating, nor a decrease in the average permanent
9 disability rating as a result of the application of the
10 FECs.

11 So there is a way, actually, to derive FEC
12 factors that bring the average rating to the same as it
13 was in 1997, and CAAA does lay that out in detail over
14 about three or four different pages, but basically it's
15 a four-step approach as opposed to the approach used by
16 the Administration, both in promulgating the 1/1/2005
17 schedule and the 1/1/2009.

18 And here's our major issue with what was done.
19 The RAND studies require that first you get a formula,
20 and the formula is a proportion of the average rating
21 over proportional wage losses. Now that was done in the
22 1/1/2005 and in the 1/1/2009 schedule.

23 I make one comment here is that in 2003 when
24 RAND studied this, it was a one to four ratio between
25 the lowest and the highest proportion. And taking the

1 2005 data, we now have a one to five. So the equity
2 between the body parts has actually worsened as opposed
3 to getting better with the application of the 1/1/2005
4 schedule.

5 So the Administration here did step one, and
6 then they derived -- and then they used this formula to
7 rerank the body parts -- and we agree that the reranking
8 of the body parts based on that formula is correct --
9 but then stopped there and then applied the same
10 analysis, which is, we'll figure out what the FEC
11 variance should be to apply in each of these eight
12 categories. So we have the same eight categories. So
13 instead of going from 1.1 to 1.4, we go from 1.2 to 1.5.

14 Okay. So that's higher and produces a 16
15 percent increase, but we think that it fails of the
16 actual mandate to have an empirically based schedule
17 which would require then that you not just stop at the
18 formula, the proportions derived, but that you actually
19 go on and then balance the ratios against one -- pick
20 one to balance it against, and then you get balanced FEC
21 factors, and then you go one step further and take these
22 balance factors and translate them into FEC factors that
23 will actually result in neither an increase in overall
24 permanent disability average ratings or a decrease. And
25 those are, in some times, lower than what's being

1 proposed, and sometimes, in most cases, higher than
2 what's being proposed by the Administration.

3 But the overall methodology, at least, did not
4 stop with deriving the rankings and then using a policy
5 decision as to what the FEC factor should be. And
6 again, that's more fully explained in our paper.

7 The actual rating manual, we have two other
8 parts. One is occupation, which was not studied here.
9 So there are no proposed adjustments for occupation.
10 And there's no data in which to change that right now,
11 but I would note that in reviewing all the studies and
12 participating in all the hearings on the studies, that
13 occupation actually needs to be studied and, in fact,
14 may explain some of the anomalies in the wage loss data
15 that we have.

16 For instance, knees comes out to people being
17 compensated over 157 percent. Well, you know, I think
18 it really -- if I had my eye worker with a knee claim
19 and he loses \$50,000 a year, a secretary with the same
20 knee claim may not end up with the same result. And
21 these old occupational variances were built on the 2000
22 -- on the pre 1/1/2005 schedule and the data there.

23 So I really think as soon as possible that the
24 data mining for effective injury per body part, wage
25 loss per occupation, really needs to be done to really

1 make these studies a little bit -- really dig down to
2 where you really need to be. And that's just a
3 recommendation for the future.

4 And we do have an age recommendation here in
5 this schedule, and quite frankly, we feel that, you
6 know, when the RAND study was done, the RAND study had
7 up to ten years of wage loss information, which was not
8 possible right now because the 2005 schedule went into
9 effect on 1/1/2005; however, there were certain
10 conclusions that were drawn on the basis of the data
11 that we have currently. And that conclusion was that
12 first, that no diminishment or decrease in the overall
13 permanent disability should occur because of age at any
14 bracket. The current schedule now has, like, minus one,
15 two, three, four, built into it. And that we agree
16 with. However, the recommendations to flatten out and
17 take out the increases from ages 41 through I think 52
18 or 54, we do have a problem with because this data --
19 the data that -- even at the broadest point, the RAND
20 data and the data of the four year wage loss, we still
21 have vocational rehabilitation built in then, and people
22 could participate in vocational rehabilitation, get
23 retrained to another job.

24 We no longer have that ability to retrain the
25 person, and so we feel that the impact on the older

1 worker is far greater now than it was before, and that
2 the data only extending over the three years is not
3 sufficient to support the removal of the pluses in the
4 current -- current PDRS for those age groups.

5 We also note that the Legislature really has
6 spoken about older people in enacting Government Code
7 Section 12941, which specifically states that injured
8 workers -- older workers have a more difficult time
9 participating in the labor market, and they need special
10 protection.

11 The Social Security Administration, similarly,
12 has enacted certain guidelines that specifically speak
13 as to these different ages and their inability to
14 compete in the labor market, and therefore we would
15 strongly urge that the proposed revision of the age
16 adjustment factors be postponed until sufficient data is
17 available to measure the long-term earnings, losses that
18 disables workers by age.

19 Lastly, the Combined Values Table. I know
20 everybody here on the podium here knows what I'm
21 talking about with the Combined Values Table, but just
22 for grins, Combined Values Table is a table that's used
23 to take different disabilities of different body parts
24 and combine them on a table and ensure that they do not
25 add up to more than 100 percent.

1 That table itself is flawed because there's
2 some errors inherent in the Combined Values Tables found
3 in the AMA guides, but also the AMA guides spend a long
4 time talking about the fact that, you know, this was to
5 combine impairments, not combine disabilities.

6 And the final adjusted number out there, but
7 -- the whole formula is a disability formula, and so
8 when you're combining different body parts, you're
9 combining disability and not impairment. And we also
10 have a statute that says you can't get higher than 100
11 percent anyway.

12 So we had an old MDT that actually added
13 another 10 percent, but it was just -- the guide itself
14 said it was just a guideline and otherwise -- could be
15 used as a guideline, otherwise could be done otherwise.

16 The problem is that the data that the DWC did
17 over 2007 clearly showed that for multiple body parts,
18 that they were in the lowest return-to-work category,
19 and they were in the highest wage loss category. Okay.
20 So they had the worse return to work and the worse wage
21 losses.

22 That clearly shows that the impact -- to me,
23 shows that the impact of having multiple disabilities is
24 not something that we need to cram down, and in fact,
25 the AMA guides talk about given the great diversity of

1 impairments and that variability inherent in combining
2 multiple impairments, it is difficult to establish a
3 formula that accounts for all situations. A combination
4 of some impairments could decrease overall functioning
5 more than suggested by just adding the impairment
6 ratings for the separate impairments.

7 For example, blindness and the ability to use
8 both hands. States also use different techniques when
9 combining impairments. Many workers' compensation
10 statutes contain provisions that combine impairments to
11 produce a summary rating that is more than additive.

12 And we're not suggesting that you do that
13 here, but my understanding was the studies were supposed
14 to refine -- refine the information on the multiple body
15 parts, and I really think that's -- those studies need
16 to continue and actually on an urgent basis; but in the
17 meantime, we would request that -- I mean, obviously our
18 request is that it just be additive and we remove the
19 Combined Values Table because there really is no
20 empirical evidence for it whatsoever. But at a minimum,
21 keeping the -- keeping the multiple disabilities table,
22 which does essentially the same thing with a little bit
23 more liberality, would at least be a fine step until we
24 could get the actual data about what the wage losses and
25 actual impacts are with people that have multiple

1 disabilities.

2 And as a final -- as a final remark, we'd say
3 that all the -- all the things that we've suggested
4 here, there's plenty of room and latitude in the
5 workers' compensation system, insurance system, and
6 self-insured system to allow for these changes in the
7 Permanent Disability Rating Schedule.

8 We have losses of 50 to 70 percent. In order
9 to collect those, we would have to have a schedule that
10 doubled to 100 percent all the ratings that we have
11 right now. We're not even -- we're not asking for
12 anything close to that, but the revisions that we're
13 suggesting, I think, would provide an empirical schedule
14 that the studies that continue to go on, particularly
15 with respect to age and occupation and multiple
16 disabilities, are absolutely critical to finally
17 deriving a schedule which really performs.

18 And I just think that in all fairness to the
19 injured workers that have to live with their disability
20 permanently, that they be fairly compensated for the
21 effects of losing legs, arms, hands, fingers, toes,
22 feet, and you know, impairments to all those different
23 body parts; and also losing their ability to fully
24 compete on an open labor market and get back their
25 Future Earning Capacity.

1 Thank you very much.

2 MS. NEVANS: Linda, when you were talking
3 about older workers, you said a Government Code Section.
4 Did you say 12941?

5 MS. ATCHERLEY: Yes.

6 MS. NEVANS: Okay. Thanks. The next person
7 on the sign-up sheet is Mark Webb.

8 MR. WEBB: Thank you for the opportunity to
9 address you today on these very important regulations.
10 My name is Mark Webb. I'm Vice President for
11 Governmental Relations, and Chief Compliance Officer for
12 Employers Direct Insurance Company; and I have some
13 perhaps uncharacteristically brief comments to make. We
14 will be filing written comments with the Division as
15 well.

16 The first is something of a technical matter
17 in regards to the initial Statement of Reasons that we
18 would recommend you revise before you ship this off to
19 the Office of Administrative Law for review. And that
20 is to cite two rather important workers' compensation
21 appeals board en banc decisions has authority for the
22 actions that you are taking today. And of course these
23 are the Boughmer cases -- case and the two Costa
24 decisions.

25 I think those two decisions quite articulately

1 lay out the empirical basis of the January 1st, 2005
2 schedule, and also provide a template for the empirical
3 basis for the revisions to the schedule and to put aside
4 the idea that somehow both the January 1, 2005 schedule
5 and the revisions that you are attending lack an
6 empirical basis.

7 The fact of the matter is the appeals board,
8 en banc, unanimously on two separate occasions has
9 pretty much debunked that argument, and I think that
10 does provide additional authority for the actions you
11 are taking in this regard.

12 The other item I would like to bring to your
13 attention, which is more fully summarized in our
14 comments, is this notion of a crosswalk study. And
15 briefly to summarize the crosswalk study, it is a policy
16 decision that is supported by data as opposed to an
17 empirical study. And we certainly agree that in your
18 initial Statement of Reasons that you are under no
19 obligation to cite that as additional empirical evidence
20 dealing with the schedule. It, again, deals with a
21 policy decision as more fully set out in the Commission
22 on Health and Safety and Workers' Compensation February
23 23rd, 2006 report to the Legislature.

24 What you do with that is certainly within your
25 discretion, but the rule-making records should reflect,

1 in my view, that this is not an empirical study that
2 should have been reviewed by the Division before moving
3 forward with this rule-making proceeding.

4 Then finally I want to make a brief comment
5 about benefit equity as opposed to benefit adequacy.
6 Again citing the Costa decision, this exercise is to try
7 to appropriately allocate the dollars the Legislature
8 has made available for compensation of permanent
9 disability. This is not an exercise to somehow within
10 the statutory maximums produce the maximum amount of
11 compensation that could conceivably be given to an
12 injured worker.

13 First and foremost, the issue of benefit
14 adequacy is within the province of the Legislature's
15 plan reauthority. And while we certainly agree the
16 permanent disability benefits are inadequate, and we
17 certainly agree the permanent disability benefits should
18 be increased, the way to do that is to amend the Labor
19 Code consistent with the rehabilitation theory of
20 workers' comp that was part of the original bargain in
21 1917 and continues to this day; but it is not the
22 function of the adjustments of this schedule to do that.

23 We certainly applaud the Division on the
24 massive amount of studies that have been completed going
25 into this, and we look forward to its implementation on

1 January 1, 2009. Thank you.

2 MS. NEVANS: Susan Fields.

3 MS. FIELDS: (Inaudible.)

4 MS. NEVANS: Okay. If you -- I will take
5 anybody from the floor at the end, so if I call your
6 name on the sign-up sheet and you don't want to do it
7 right now, if you decide at the end, you will have the
8 opportunity.

9 Alan Thompson, maybe?

10 MR. THOMPSON: Yes, ma'am.

11 MS. NEVANS: Yes. Would you like to testify?

12 MR. THOMPSON: You are hearing from the
13 injured today, correct?

14 MS. NEVANS: Yes.

15 MR. THOMPSON: Okay. Fine. And it is
16 permitted even after I give oral testimony that I can
17 give a written as well?

18 MS. NEVANS: Yes.

19 MR. THOMPSON: Okay. Great. First of all, I
20 want to thank all of you for letting me come today. I
21 am very fortunate to be here today. My problems with
22 workmen's comp began a little over two and a half years
23 ago. I was employed as the chief engineer at the
24 Ventura Marriott in Ventura Beach.

25 On August the 2nd of '05, while going from a

1 lower roof to an upper roof, the ladder in which I was
2 using to cross a roof collapsed on me. I fell back
3 about approximately 14 feet straight back on my lower
4 back, as well as my cervical spine.

5 Shortly after my accident, the very first
6 spine doctor that I was assigned to, put me on numerous
7 medications, including antiinflammatory medication. For
8 the better part of a year I complained of serious lower
9 back and abdominal pain. The doctor at that time
10 requested pathology, as well as to send me a
11 gastrointestinal liver doctor.

12 These requests were delayed and also denied by
13 Travelers Insurance. Once they were approved by
14 Travelers Insurance, there were further delays during
15 which after the first 11 months of being on a workmen's
16 comp program, I suffered a heart attack.

17 At that point I was administered to or sent to
18 Community Memorial Hospital in Ventura Beach, where I
19 was then told by doctors that I was in renal failure due
20 to the medication prescribed by the spine doctor. This
21 has left me with numerous internal problems such as
22 hypertension, renal failure, extreme failuliver (ph),
23 serious abdominal problems, ED, and also mental
24 stability.

25 Let's not forget all the other injuries that I

1 sustained to my lower back as well as to my cervical
2 spine, which now cannot be addressed because at this
3 present time I cannot have surgery of any kind due to my
4 secondary issues, which is one of the reasons that I'm
5 here today to talk about a little bit about secondary
6 causes.

7 In the workmen's comp program to this day,
8 there is no protection in the workmen's comp program to
9 protect an injured worker from secondary issues. I
10 cannot only hold the doctors responsible because the
11 doctor requested testing be done that was not done,
12 denied by the insurance company, and the workmen's comp
13 carrier at this time is not held responsible for
14 secondary issues.

15 Yes, the workmen's comp carrier is responsible
16 for the total amount of injury due to the second --
17 secondary issues. At this time, Travelers Insurance,
18 based on my medical AME report from Dr. Gillis of
19 5/5/08, had determined that my life-term benefits
20 medicalwise now is at \$167,179.98. However, those
21 benefits will only be paid out to me at approximately
22 \$310.50 per week until those benefits run out.

23 Even if I was allowed to be paid in advance
24 bi-monthly, that would still only give me \$1,242 a
25 month, which is not enough to sustain life to pay bills,

1 especially in this economy that we are now living in.

2 Furthermore, Travelers Insurance will then
3 have the ability to take this 167,000 that's been
4 determined not by value raters but only by their raters,
5 which has not been determined yet by workmen's comp
6 board yet because there are still two issues that have
7 not been addressed, my cervical spine, as well as mental
8 issues.

9 However, if Travelers was to take this
10 167,000, they could put it into an interest, low
11 interest bearing account, and make approximately \$6,000
12 a year off of my money, which I'm not allowed to take
13 any advances off of and can be told how to manage that
14 money by the insurance company.

15 My next point is this: If something is not
16 done with the workmen's comp system benefits to roll
17 back prior to the Governor's reorganization of '04,
18 litigation should be examined to at least level the
19 playing field. Workmen's comp bill of rights should be
20 adapted to allow the insurance companies, if they are
21 determined to either delay or deny coverage, that they
22 should be held 150 percent responsible for secondary
23 issues at a higher rate, and to provide necessary care
24 to cover those expenses as well as paying out an
25 extremely higher rate or being able to at least cover

1 that employee to cover those secondary issues.

2 Over the last two and a half years I have
3 tried to stay as active as possible with as many things
4 as I possibly can. Naturally physical things have
5 gotten much harder, the migraines, and at this present
6 time I'm popping probably about 22 pills a day just to
7 maintain a certain level of comfort and to maintain my
8 pain, at a cost of \$3,200 a month to the insurance
9 company.

10 I have, over the last two and a half years,
11 applied for not only state but also federal disability,
12 and at this time the federal system is so overloaded
13 that it's been two and a half years since I applied for
14 disability. I have been denied twice, and now I have to
15 go in front of a law judge to have my case heard, which
16 I have been told it will probably take at least another
17 year to year and a half, which leads me back to my
18 original statement to the fact that at this present
19 time, I am at the 1,200 -- at the \$310.50 a week
20 allowance by the insurance company.

21 I think at this time we can pretty much agree
22 that there are some unfair practices that are being
23 committed by the insurance companies today. These
24 systems -- and I understand that we have factors and
25 there are scales that go in, but it does not begin to

1 compare the human toll that it's taken on the California
2 worker in the State of California.

3 For myself, any benefits that would come down
4 the line shortly will probably not assist me in any way.
5 I have been informed by over 15 doctors that I, at some
6 point, will die of my injuries. That's why I have
7 decided that it's very important that I at least come in
8 and make a verbal statement, as well as a written
9 statement, into the file.

10 At some point there has to be a decision made
11 that insurance was put in place to protect the injured,
12 not so companies could have exuberant profits, and also
13 to create more and more millionaires. Insurance was put
14 in place to protect society, not to create monster
15 insurance conglomerates which now exist.

16 The last note I want to make is somewhat of a
17 personal note, and that is in the last year and a half,
18 I have written to Senators, also written a letter to the
19 Governor. In the workmen's comp system there is no
20 procedure to follow-up on accidents or to report
21 accidents such as we do in car accidents.

22 And I bring this up because a lot of accidents
23 are just simply put under the table. Evidence is
24 destroyed, and in my case, shortly after my accident,
25 all of the wooden ladder structures that were at this

1 hotel were immediately destroyed and were replaced by
2 new aluminum safety ladders. And I bring this up
3 because I think roughly -- I don't know exactly what the
4 cost is right now, but I think the insurance company,
5 between my benefits, medical stay is way over probably a
6 million-dollars by now. For approximately \$18,700 this
7 accident can -- would have been completely avoided,
8 which means that at some point we need to have
9 prevention versus just having benefits paid out to the
10 workers. We need to have a much safer work environment.
11 And this would be up to the responsibilities of not only
12 the owners, but also the operators in which operate --
13 especially in the hospitality industry that runs large
14 hotels that are responsible for hundreds of employees,
15 not only employees, but guests.

16 Would you like me to give you all my workmen's
17 comp information?

18 MS. NEVANS: Give it to Maureen, who's at the
19 table right there.

20 MR. THOMPSON: All right. Thank you again for
21 letting me speak today. I appreciate it.

22 MS. NEVANS: Thank you.

23 MR. THOMPSON: Yep.

24 MS. NEVANS: Okay. Next I have Gary Hoag from
25 Applicants' Attorneys.

1 MR .HOAG: Good morning. Thank you for the
2 time. My name's Gary Hoag. I'm now a retired CHP
3 officer, and I'm being represented by Linda Atcherley
4 with my case now.

5 I was a law enforcement officer for 29 years.
6 The last 24 years I was with the CHP. And on January
7 10th of 2005, I was on duty in uniform investigating an
8 accident on I-5 near the San Onofre Power Plant. And
9 during that investigation, an arrant driver who was
10 uninsured spun out of control came into the median and
11 crushed my body between the two vehicles.

12 And at the time, a witness saw the accident,
13 which came over and put a tourniquet on my leg and
14 actually saved my life. They took me up to the Mission
15 Viejo Trauma Center and put me into a medically induced
16 coma for about a week there because they didn't know how
17 I was going to do.

18 I went through 12 units of blood and numerous
19 surgeries. Throughout my injury, I had orthopaedic
20 surgery, I had vascular surgery. They had to actually
21 manufacture arteries for my leg because my leg was
22 served in half below the knee. Just one ligament was
23 holding it on. And I had plastic surgery,
24 reconstructive surgery, and then I've had two spinal
25 fusions in my neck, and I have one -- one pending. The

1 doctors want to actually wait until that ruptures before
2 they do the third because it would restrict too much
3 movement in my neck.

4 So throughout this time, the recovery process,
5 to say the least, was very difficult. It took me over
6 eight months before I could go weight-bearing and walk.
7 My tibia bone has a rod in it, which rejoined my leg;
8 and the fibula bone is fractured and fragmented into
9 many, many pieces, which they don't even want to touch.
10 They're going to leave that alone forever.

11 And as a result I have been documented not
12 only as permanently disabled but substantially
13 incapacitated is the terminology from the IME, from
14 state employment.

15 And so I have retired. I was lucky enough to
16 be age 50 and had enough years to get a service
17 retirement. The severity of this injury is a little bit
18 different than an amputation because the doctors elected
19 -- I had over 15 doctors work on me at the hospital --
20 they elected to reattach the leg, and the vascular
21 surgeon decided that it would be successful.

22 However, from my knee down, I can go
23 weight-bearing, but my ankle, my toes, my foot doesn't
24 work and will never work, and my leg is numb. I'm three
25 and a half years into the accident now. I'm very close

1 to what -- my primary treating physician happens to be
2 the chief of trauma surgery at the Mission Hospital. He
3 since left that position and went to Cedar Sinai. So
4 he's a very reputable orthopaedic surgeon. My case, he
5 actually used my case at UCI, and one of the interns
6 that worked on my leg -- it's called a wound vac, wound
7 system. And my leg injury was one of the most severe in
8 the trauma unit, and he actually wrote a 14-page article
9 and that was published into the American Medical Journal
10 using my case.

11 So as a result, I'm retired. I have the
12 disability forever, and I have a pending surgery. As
13 the doctor said, I asked the question, when would that
14 occur, and he said, in time, age will cause that to
15 rupture and you'll have to come back in for the next
16 surgery.

17 So it's very, to say the least, frustrating.
18 I have had numerous denials of care, which I won't go
19 into because it's about permanent disability; but it's
20 been brought to my attention that just the leg injury
21 from the old rating system to the new proposed rating
22 system would net me over a loss of \$100,000. And
23 serving 29 years of my life in law enforcement trying to
24 do what was right, I'm not a fraudulent case, I was
25 doing my job, I wasn't found negligent in any way, and

1 yet right now they're paying me \$440 every two weeks for
2 29 years of my life dedicated to serving people out
3 there. And just to say the least, it's frustrating.
4 And that's why I have the attorney to see what she can
5 do from here.

6 So thank you for your time.

7 MS. NEVANS: Thank you. Next I have Velda
8 Gall.

9 MS. GALL: Thank you again for listening to
10 me. I am also a patient. My situation is a little bit
11 different. Everyone here can really attest as being a
12 part of the workmen concept, it is total Hell.

13 My situation is long-term standing. When you
14 go to your job in the morning and you're expected to do
15 your job and you don't anticipate anything and through
16 no fault of your own, you get injured, and the situation
17 had been from the previous night and your employer, the
18 management of your -- of where you worked, neglected to
19 inform or to do anything about it, and you walk into a
20 situation the next morning of a chemical that burns your
21 bronchi, that almost knocked you out, and you are
22 expected to go on that particular day.

23 Now, you're doing what you were hired to do.
24 You're responsible for 32 other individuals. You call
25 your employer. And I worked as a corporate trainer for

1 this company, APBS Station that you all know. I have
2 worked as a corporate trainer, never called them for an
3 emergency and I'm paging them repeatedly and they, first
4 of all, did not answer the page. Since I paged so much
5 because the people were supposed to be coming in at 8:00
6 -- it's a Saturday morning -- one of the managers was
7 out the previous week with strep throat. Spoke to her
8 Friday night. She's supposed to be so sick. I'm paging
9 from the vice president of the company, the president of
10 the company, and the manager, and no one's answering my
11 page. They know that if I called, there was an
12 emergency. They chose to ignore it. Finally one of my
13 -- my senior manager called.

14 I explained the situation that we had a
15 chemical exposure situation. I tried -- I had opened
16 the door and I was trying to aerate the office and we
17 had fans going. No -- Arden Realty had no one on the
18 premises to help. What I wanted was permission to close
19 down for the day. Never got it.

20 They told me that if I left with one of the
21 employees there, that of course I would be fired. And
22 in hindsight, I should have left; but I'm following the
23 company protocol. So little did I know that when I had
24 one of my part-time supervisors come in, she told me,
25 this started last night. And the same manager that I

1 spoke to, he was on his way home so he didn't want to
2 address it. They could smell the chemical, not knowing
3 where it came from. Excuse me. I'm sorry, but I do get
4 emotional when this happens.

5 So when I spoke to this gentleman the next
6 morning, finally after about an hour being there because
7 I got in early to do the attendance and to take -- to do
8 the report, he says to me, you need to call Nina. Now
9 Nina was our HR supervisor. She's out in Semi Valley
10 with her children at 7:30, 8:00 in the morning, and I
11 questioned, I said, why should I call Nina. He said,
12 you call Nina. What he wanted me to do was get off the
13 telephone, drop it right there.

14 So I called her and she says to me, why are
15 you calling me. I said, I was instructed to call you.
16 Again, I was told, you cannot leave. So this is like
17 7:30 now because I had gotten there at 7:00. So my
18 part-time supervisors were coming in and some of the
19 callers were coming in. And I told them to go -- I was
20 a training corporate trainer, so on Saturdays I was
21 management. I was in charge, so I told them to go into
22 the lunchroom, I was trying to get things settled and
23 what I was supposed to do. In hindsight, I should have
24 also called HAZMAT, but I was still following company
25 protocol.

1 So here I am with people coming in, and Nina
2 tells me, well, you need to call back the manager. So I
3 call him back. Guess what? No answer. I paged and I
4 paged and I paged. She paged. My other -- my other
5 supervisors come in. So here I am with a junior
6 supervisor, two part-time supervisors. We have fans
7 going. I call the building, the office of the building,
8 and they told me they will send an engineer to aerate
9 the building.

10 MODERATOR GARD: Ms. Gall, can I ask you to
11 tie this into the regulations, please.

12 MS. GALL: Okay. All right. My injuries
13 incurred on February the 13th, 1999. So that means that
14 I am still trying to get resolution after nine years,
15 four months, and eight days; and we're still counting.
16 I had very serious injuries. There were a multitude of
17 them from this chemical exposure. I had burned bronchi.
18 I couldn't talk from November of '99 to May of 2001 --
19 2000. I'm sorry. I had cognitive impairment. I had
20 industrial-induced asthma, memory loss, depression,
21 insomnia, chronic fatigue syndrome, fibromyalgia,
22 headaches that were like a (inaudible) is going off in
23 my head, rashes, hair loss, IBS syndrome, hypertension
24 caused by all of this stress and all this anxiety. And
25 I also, in the course of going to the doctor for my

1 workmen's comp, was in an automobile accident where
2 someone ran into me and totaled by Lincoln, which is a
3 big car. Thank God I had it because I would not even be
4 here. So I am also thankful that I am here.

5 For my back injuries, most of that was taken
6 care of by my insurance company, and I kept everything
7 separate; but what was suggested was a spinal
8 decompression. I was prescribed physical therapy five
9 times a week, Pilates Yoga Aparatic Therapy. I had
10 massage three times a week. Every way I went to a
11 doctor or somewhere, and in the middle of all this,
12 which I'm now finding out from being at this hearing,
13 something happened in 2005. They stopped paying me
14 anything. I was in extreme pain and I was left in the
15 lurch.

16 So what do I do now, because I can't walk for
17 a very long, I can't stand, I can't sit, I can't sleep.
18 I'm in pain all the time. So I chose to find a place
19 where I could get physical therapy and pay for it out of
20 pocket. To date, I have paid more than \$40,000, okay,
21 because I have to pay for a personal trainer for my
22 disability. He -- he structures everything for my
23 disability. I want to get pain-free. I want to be able
24 to do the things -- some of the things I used to do.
25 Also, I'm older worker, so this is -- is a great impact

1 on me.

2 From whatever was happening from the first
3 initial phase of this when the people started coming to
4 me for a settlement, for whatever, the amount that is
5 being offered is steadily being reduced and they're not
6 paying anything. They're not paying for my mileage,
7 they're not paying for -- some of my prescriptions have
8 been denied, payment as little as \$19.50. Mileage is
9 not being paid, as I said. I'm just I'm out on a lurch
10 here.

11 My out-of-pocket expenses are still
12 escalating, and I have -- now know that there's been a
13 cap placed on the amount of disability that I can
14 receive. And, you know, the loss of that amount is
15 very, very staggering.

16 These injuries really impacted my life from
17 the air that I breath to the food that I eat, how I
18 think, the way that I think, how I sleep, the way that I
19 speak, and even how much -- how often I go to the
20 bathroom. I mean, it's everything.

21 Since I do not want a life-time medical from
22 workmen's comp, I just want to -- truthfully, I want you
23 guys out of my life because it has not been a pleasant
24 experience. I really thought that workmen's comp was
25 supposed to really enhance, help in us getting back on

1 our feet.

2 All that you can't take care of you usually
3 have insurance for. The insurance company, they don't
4 care. I have had -- I think it was originally Kemper
5 Insurance and now it's Broadspire. They just don't
6 care. Papers were signed for MSA over a year ago --

7 MS. NEVANS: I'm sorry. I'm going to have to
8 ask you again to tailor your comments to the
9 regulations.

10 MS. GALL: Well, I don't know what the
11 regulations are. I'm sorry. I'm doing this off the
12 cuff. I'm trying to adapt it to whatever this is. But
13 anyway --

14 MS. NEVANS: There's copies of the regulations
15 in the lobby if you want to take a look at that.

16 MS. GALL: Okay. Let me -- I'm just going to
17 finish up and you use what you can and I'm not going to
18 take you -- very much more of your time.

19 My -- because I'm not permanent stationary
20 completely yet, my attorney says I'm entitled to TPD
21 mileage, physical therapy, and prescription
22 reimbursement. My case is not even on the Court
23 calendar, and as I said, it's nine years and counting.
24 How much time does that take.

25 What do I want? Okay. I want a timely, fair

1 and, equitable settlement. I cannot agree to some
2 amount until I receive enumeration for all of the
3 out-of-pocket expenses that I've done. These are things
4 that I apparently was entitled to but did not receive.
5 Mileage and prescriptions and so forth, that's an
6 integral part of workmen's comp. It's really to help
7 people. Really I thought that. But it hasn't been
8 beneficial to many of us here in certain respects.

9 This is not what is happening. My ten year
10 anniversary is coming up. My injury is not really
11 diminished in any way, and I really would hope that this
12 will help influence and expedite matters so that
13 everyone's cases can be solved in a timely manner.

14 And I thank you so much for your time. I
15 really do appreciate it. Don't think that I don't
16 appreciate you as the -- as the -- representing the
17 entity because maybe some of these things were not
18 apparent to you, but we're all here suffering. Have
19 compassion on us, especially the workers because we --
20 we're not going to be out there in the -- in the
21 workplace any longer. And you want good workers, and in
22 order to have good workers, you have to have good
23 workmen's comp benefits.

24 Thanks again for your time.

25 MS. NEVANS: Thank you. Cynthia Leon.

1 MS. LEON: Good morning. Cynthia Leon with
2 the California Manufactures and Technology Association.
3 My comments are brief. We'll also be submitting in
4 writing further comments.

5 First of all, thank you for all the work that
6 you have put into proposing these -- this new schedule.
7 We are -- we have been very involved with the process
8 from the reforms into the current adaptation of new
9 regulations to make the system more efficient.

10 We believe that the schedule needed to be
11 based on numerical data. It was one of the things that
12 we consistently asked for, and I think that Labor Code
13 460 -- 4660 asked for those adjustments to be based on
14 current data; and I think the Division has done all the
15 studies necessary to do so.

16 We believe that the proposal that you have put
17 in front of us continues to follow the spirit of the
18 reforms, which would propose objectivity in the system,
19 and we support the age adjustment and the ranking of the
20 body parts as proposed in the schedule. We believe
21 those adjustments will address the benefit equities to
22 ensure that benefit dollars are targeted to those
23 injured workers most impacted by industrial injuries.

24 The one comment that we wanted to put in the
25 record with regards to the initial statement of reason

1 was a comment that the business community would not be
2 significantly adversely impacted. We do caution that
3 comment on the basis that the economy is still on a
4 downward turn, and any increase in the cost of work comp
5 system must take into consideration that it will impact
6 the way any business adjusts -- adjusts their -- their
7 expenses.

8 One of the things that we have seen with the
9 savings is an investment in the safety programs,
10 prevention programs, and obviously there's a stronger
11 concentration on return to work, which we really want to
12 continue seeing in order to make the system better.

13 So as of now we believe that the way that the
14 data has been evaluated has been accurately done, and we
15 are pleased with the way the Division has come forward
16 with this. Thank you.

17 MS. NEVANS: Scott Lipton.

18 UNIDENTIFIED FEMALE SPEAKER: I'll go get him.

19 MS. NEVANS: Okay. I'll go on to the next
20 person while we wait for him. I have some people who
21 signed up but checked no, so I'm not going to call your
22 name; but when I take -- open at the end, you can come
23 up if you change your mind.

24 MS. GARD: Maureen has another list --

25 MS. NEVANS: Yeah, because everybody that's

1 left on here has checked no. Jesse Cenicerros. Scott,
2 we're going to do Jesse first and then you.

3 MR. LIPTON: Okay.

4 MR. CENICEROS: Good morning. Can you all
5 hear me?

6 UNIDENTIFIED SPEAKERS: Yes.

7 MR. CENICEROS: I want to thank you for giving
8 me the opportunity to testify today. I'm going to take
9 this opportunity to talk a little bit about the
10 permanent disability ratings and what's it done to
11 myself and my family. My name is Jesse Cenicerros, and
12 I'm President of Voters Injured at Work. I worked for
13 Lockheed Martin for 20 years before injuring myself on
14 the job. I took a great deal of pride in working on
15 some of the most highly classified and technically
16 advanced aircrafts in the world.

17 I used to drive 76 miles one way to my place
18 of employment, when I would leave my home at 4:30 in the
19 morning only to arrive at five or 5:30 in the afternoon
20 that day. When I injured myself, I didn't realize how
21 drastically my life would change. I not only lost my
22 employment with Lockheed Martin in 2002, but my
23 self-dignity and my pride were also taken away from me.

24 Culturally I was shown by my father that it
25 was a man's duty to take care of his family at all cost.

1 So, when my wife had to take on the role as sole bread
2 winner in the family, it was a complete blow to my pride
3 since I could no longer be the sole provider of my
4 family as my father had taught me that I should be.

5 My wife took on a complete role reversal. She
6 was now the head of household which meant worrying about
7 keeping a roof over our head, keeping food on the table,
8 and worrying about having medical coverage for ourselves
9 and our family, and working many hours in order to
10 assume these new responsibilities.

11 With all of this, she has battled every day on
12 her own health issues. Not knowing how long she'll be
13 able to work, since she herself works and lives with
14 rheumatoid arthritis, an extremely painful and
15 degenerative disease. My wife and I are so blessed to
16 have two children and two grandchildren, all of whom
17 were affected by the injuries and the implications.

18 In losing my job and being unable to work, I
19 have lost my 401K, my life insurance, my special
20 accident insurance policies through my employer, I have
21 lost wages. When I injured myself, I was making \$20 an
22 hour. If I were still employed, I would be making over
23 \$30 an hour. My pension I receive \$56 a year of
24 employment for being there. At present I would be
25 receiving \$77 a year and I still would have

1 approximately 15,000 -- or 15 years to retire. It's
2 just another impact of being an injured worker.

3 The reason why I'm taking this opportunity to
4 tell you a little bit about my life story is to show you
5 the impact of what it is to be a part of the workers'
6 comp system. It has not only done to myself but to
7 everyone in this room today -- if I could have all the
8 people here stand up that are part of Voters Injured at
9 Work or part of a family.

10 As you can see, we have children today
11 representing because as -- as we all know that workers'
12 comp doesn't just affect the individual that injured
13 themselves, it affects the whole family. That's the
14 reason why I have done this today is to show that it
15 affects each and every one of us, and for generations.
16 It affects for generations. There's some people here,
17 stories that remember their fathers being insured or
18 their mothers being injured at work and how drastically
19 it impacts the whole family. Financial burdens -- thank
20 you.

21 Financial burdens on today's families brings a
22 great deal of pressure. Injured workers are not only
23 losing their homes, their cars, their families, their
24 friends, but they are also losing their pride and
25 dignity. This is the reason why we are here today

1 asking that you please raise the permanent disability
2 ratings for all -- excuse me -- let's see. -- asking
3 that you please raise the permanent disability ratings
4 for all injured workers to something that would be fair
5 and adequate to all injured workers.

6 So in closing, Voters Injured at Work is
7 asking that the Governor act and we have necessary data
8 to show that SB899, injured workers are losing 50 to 70
9 percent of permanent disability ratings, which is why
10 we're asking the Governor and his Administration to act
11 with emergency to reinstall a permanent disability
12 schedule that is fair and adequate to all Californians
13 injured on the job. Thank you.

14 MS. NEVANS: Thank you. Scott Lipton.

15 MR. LIPTON: Good morning. Carrie, Susan,
16 George, thank you for allowing me to testify today. My
17 name is Scott Lipton. I'm the Deputy Managing Director
18 for the California Coalition on Workers' Compensation,
19 a 501C6 not for-profit that represents the workers'
20 compensation interest for public, private, and not
21 for-profit employers across the State of California.

22 I'm here to do two things. The first is to
23 thank you for this open, long-standing, deliberative
24 process that the Division has taken in revising the
25 Permanent Disability Rating Schedule effective 1/1/2009.

1 Carrie, this has been a process that I think
2 has lasted about a year and a half in a variety of
3 meetings with all stakeholders where we have been able
4 to hear from you and provide our input on issues like
5 the age modifier, the body part reranking within the FEC
6 that Ms. Atcherley alluded to earlier, as well as other
7 issues of importance in regards to the Permanent
8 Disability Rating Schedule.

9 That -- that process, I think, has led to once
10 again, a one -- a schedule that meets your legal and
11 statutory obligations under 4660(d) where you have a
12 system that is uniform, it is consistent, and it is
13 objective.

14 I do want to raise something that one of our
15 friends in the insurance industry raised earlier in his
16 testimony, and that is this is not a conversation about
17 benefit adequacy. Adequacy is something that is set by
18 the plannary (ph) authority in workers' compensation by
19 the Legislature. The DWC does not have a
20 responsibility, nor an obligation in our view, to make a
21 determination about adequacy of benefits. That is a
22 decision for the Legislature and the Governor to act
23 upon and then for the DWC to carry out.

24 In fact, your obligation is about equity. And
25 you have met that obligation vis-a-vis your reach and

1 your studies. Empirical evidence is exactly that. Is
2 it not a study or observations that support or promote a
3 policy position. Is it, in fact, an objective, and I
4 think one adjective that can be used is blind or
5 motive-free analysis of the data that's collected. The
6 new wage loss study is a perfect example, looking at
7 recent wages and making a determination on the impact of
8 the FEC, as well as permanent disability ratings in
9 general.

10 It should be noted, and you noted it in your
11 initial Statement of Reasons, that although a lot of the
12 numbers thrown about in political rhetoric and political
13 discussions that the permanent disability rating has, in
14 fact, only decreased according to the -- the Division's
15 initial Statement of Reasons by, I believe, 27 percent,
16 if you look at the studies over a 42-month period.

17 While I don't want to get into a political
18 argument during my presentation, it should be noted that
19 even the Commission on Health Safety and Workers'
20 Compensation noted that prior to 2004, the Permanent
21 Disability Rating Schedule was chaotic, the Permanent
22 Disability Rating Schedule and rate setting authority
23 was chaotic and inconsistent. And we believe that the
24 1/1/05, and then again this new schedule has brought
25 that level of consistency and objectivity that's

1 important.

2 Beyond that it's important to note that we
3 believe that this is only a modification to the 1/1/05
4 schedule. A revision, per se, and that in accordance
5 with other case law, the Costa and Boughner decisions,
6 it is important to note that this schedule should be
7 used only for decisions going forward prospectively from
8 1/1/2009 indicating of the data under -- utilizing that
9 this schedule utilized should also be used prospectively
10 of going forward.

11 Thank you very much for your time, and I
12 appreciate the opportunity.

13 MS. NEVANS: Okay. Thank you. Saul Allweiss.

14 MR. ALLWEISS: Good morning. My name is Saul
15 Allweiss. I'm an attorney in Southern California. I'm
16 here be behalf of Safeway Stores. Safeway is one of the
17 largest employers in the State of California. Safeway
18 Stores was very deeply involved in the passage of SB899,
19 and Safeway Stores applauds the administrative director
20 for the work that she has done in creating the empirical
21 -- in conducting the empirical studies that have
22 resulted in this proposed rule-making.

23 As Mr. Webb very articulately stated, this is
24 not -- this is an issue of equity and not adequacy. The
25 issues of adequacy must be addressed by the Legislature

1 in a debate and within that form only. In terms of
2 equity, the empirical studies conducted now and the
3 proposed rule-making addresses both the spirit and
4 intent of SB899, and in particular Labor Code Section
5 4660(d); and we urge that the regulations be implemented
6 as stated. Thank you.

7 MS. NEVANS: Okay. Thank you. That's
8 everyone who had checked that they wanted to testify on
9 the sign-in sheets. Is there anyone else in the
10 audience who would like to give testimony? Come on up.
11 State your name for the reporter.

12 MR. JIMENEZ: My name is Arturo Jimenez, and
13 I'm with Voters Injured at Work. And I wasn't going to
14 say anything, but I think I have to. I would like to
15 call my wife and my kids up. Come on guys. Can I have
16 the children up here, please. Can I have the kids.
17 We're going to have kids here now because this is how --
18 this is hurting families. And can you guys come up
19 here. I want the kids and the teenagers, too. I want
20 everybody to come up here. I want you to understand
21 something. That it's really hard to talk to children
22 about equity and objective -- objectivity. I'm sorry.
23 I'm very emotional right now -- about being objective.

24 So when a child wants to go to Disneyland and
25 he can't or when he wants to go to McDonalds and he

1 can't. These are my kids, and these are my children.

2 My father-in-law got hurt on the job.

3 SMALL CHILD: Diego's fast.

4 MR. JIMENEZ: Yeah. He's -- Diego's fast.

5 And we have to supplement my father-in-law's -- my wife
6 and I, she's a teacher, and we have to supplement his
7 income. This doesn't hurt just one injured worker.
8 This hurts the kids of our family. It's hurting,
9 tearing families apart because my father-in-law because
10 we all have to supplement his income. So when we have
11 to go -- I mean, forget gas prices and those things.
12 We're already hurting when it comes to, you know,
13 income.

14 These children have to deal with the workers'
15 comp system every day. Now, Ramona couldn't be here.
16 She's a grandmother and she has a grandchild. Her
17 grandchild is epileptic and she's from the central
18 coast. She lost her house. I wonder how she's going to
19 try to, you know, give her grandchild an opportunity,
20 you know, to understand how the workers' comp system
21 happens. She now can't live with them, so one of her
22 relatives took her in, and then her husband of 34 years
23 now lives somewhere else. They lost their grandchild,
24 who's an epileptic.

25 How are we going -- how are we going to tell

1 that little girl why she can't live with her
2 grandparents? So when the gentleman from -- who's here
3 to talk -- you know, who's telling you what to do in
4 terms of you have to be equitable and all these other
5 things, well he's a lobbyist, you know. These children,
6 they don't understand that, and we have to live with
7 these kids and that's why sometimes injured workers get
8 emotional.

9 Hopefully we did a good job in getting the
10 media out and they're going to learn more. And we know
11 you're all human beings and you do care about injured
12 workers, and we're are going to try and be as respectful
13 as we can; but the lobby is going to get a little bit
14 noisier because we're going to keep bringing our
15 children somewhere. Maybe not on school days, but
16 thanks a lot for having it during the summer because we
17 could have brought some more kids out. It was really
18 hard to get people out today, especially in the
19 mornings, on Monday mornings.

20 But again, I want to also ask you to please,
21 if we can have these meetings like in a place where
22 people, regular people can come to, because I still feel
23 that this is -- remember the last time. This is my wife
24 who told me I couldn't buy lunch because I have to drive
25 and pay for parking last time. So if we can have these

1 meetings at a place where injured workers can come to
2 because it's really hard. Every time somebody drives
3 here, they have to pay like \$10, and they still have to
4 -- and gas now is ridiculous. So I know it's really
5 hard, Ms. Nevans, but maybe we could have it like at --
6 like in Central Valley or someplace where it's -- you
7 know, there's no cost to, you know, at least park and
8 it's easy -- it's easy to access, you know. And then
9 people feel a little bit better about getting there.

10 But I just wanted to make -- just talk to you
11 about real families. It's not about just one injured
12 worker. This is like -- this is expediential in terms
13 of how this is affecting the California economy and the
14 people and the families here. It's a human thing. So I
15 know you guys got hearts, so I just wanted it talk to
16 you about that one when another guy was beating you up
17 about numbers.

18 Thank you.

19 MS. NEVANS: Thank you.

20 MODERATOR GARD: Thank you.

21 MS. NEVANS: Thank you, Arturo. Is there
22 anyone else who would like to give testimony today?

23 (No response.)

24 MS. NEVANS: Is there anyone else?

25 (No response.)

1 MS. NEVANS: Okay. Then at this point I'm
2 going to close the public hearing. Again, we'll be
3 taking written comments through 5:00 p.m. tomorrow, and
4 we're conducting another hearing like this in Oakland
5 tomorrow at 10 a.m.

6 So I want to thank everybody for coming out
7 today, giving us your comments; and we'll take those
8 comments and go back and look and see if we need to make
9 any further revisions to the regulations.

10 So, thank you again.

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12 (Whereupon, the Division of the Workers'
13 Compensation Schedule for Rating Permanent Disabilities
14 Public Hearing was closed.)

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1 CERTIFICATE OF SHORTHAND REPORTER

2 I, TERRIE CULP-SMITH, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein;
4 that I reported the preceding in shorthand writing from
5 the tapes that were provided to me; that I thereafter
6 caused my shorthand writing to be transcribed into
7 typewriting.

8 I further certify that I am not of
9 counsel or attorney for any of the parties to said
10 proceeding, or in any way interested in the outcome of
11 said proceedings.

12 IN WITNESS WHEREOF, I have hereunto
13 set my hand this 24th day of July 2008.

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23 Terrie Culp-Smith

24 Shorthand Reporter

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